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## **EMPLOYMENT ADVISORY COUNCIL MINUTES**

**DATE AND TIME:** Friday, September 7, 2007  
2:00 p.m.

**PLACE:** Department of Workforce Services  
140 E 300 S  
Room 211B  
Salt Lake City, UT

### **MEMBERS**

**PRESENT:** Kristen Cox, Chair  
Chyleen A. Arbon  
Thomas E. Bingham  
Greg Diven  
James V. Olsen  
Eddie P. Mayne  
Reta D. Oram  
Dan Peay  
Mary Catherine Perry  
John D. Williams

**OTHERS:** Bill Starks, DWS  
Chris Love, DWS  
John Smith, DWS  
Jerry Fruin, DWS  
Charles Amonett, DWS  
Art Hunsaker, Legislative Research

### **WELCOME**

Kristen Cox welcomed the members to the meeting. Introductions were given.

### **APPROVAL OF DECEMBER 20, 2006 MINUTES**

On motion by Thomas Bingham, second by Dan Peay, the minutes of the December 20, 2006 meeting were approved.

### **COUNCIL MEMBERSHIP VACANCIES AND TERMS**

Bill Starks said there is a Public Representative vacancy on the Council, which was left open with the resignation of Lynne Ward. Members were asked to forward recommendations to Bill Starks. Dave Wilson notified Ed Mayne that he is unable to fulfill his term. Ed Mayne recommended Richard Kingery, business manager of the International Brotherhood of Electrical Workers, Local 354. He will submit the nomination to Bill Starks. Richard Thorn, Steve Booth and Chyleen Arbon's terms expired in June 2007. Chyleen Arbon is interested in another term. Ed Mayne will check with Steve Booth and will either recommend his continuing for another term or make

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another recommendation. Jim Olsen will contact Richard Thorn, but thinks he is willing to serve another term.

### **PROPOSED EMPLOYMENT SECURITY ACT AMENDMENTS FOR 2008 LEGISLATURE**

*35A-4-403 – Eligibility of individual – Conditions- Furnishing reports – Weeks of employment – Successive benefit years.*

Bill Starks gave the background for this proposed legislation. The current law requires, as a condition to become eligible for UI benefits, that the claimant to certify weekly that they are able and available and registering for work and actively seeking employment, unless they are attached to regular jobs. At a Disaster Preparedness meeting in Dallas he attended in June, a provision in certain states' law was discussed that waives certain filing requirements in the event of a disaster. Louisiana and the US Department of Labor determined that requiring claimants to fulfill work search requirements were unrealistic during the Katrina disaster; the requirements were waived, similar to a deferral for union jobs. Under this proposed legislation, a disaster declared by the governor or president would allow certain filing requirements to be waived. Specifically, the department could waive or alter the requirements that state under Subsections (1)(a) that the individual has made a claim for benefits for that week in accordance with the department's rules, and (b) that the individual has registered for work with the Department and is seeking work every week. By rule we would be able to waive or alter either or both of the requirements. Currently, Utah would be in violation of its law if it waived the requirements without that provision.

Jim Olsen indicated that during the Katrina disaster, other laws kicked in that had nothing to do with the disaster. The state had to make it more specific following the Katrina disaster. Chris Love said the Department would retain the discretion whether to invoke the requirements. Greg Diven said the language seemed vague and his concern is the possibility for abuse. Bill Starks said the Department wanted it to be fairly broad so that it could be applied to different disasters with different circumstances, they would develop the rule, which would be more detailed. Currently, we can't waive the requirements in the event of a disaster. Kristen Cox said unless you waive the requirements, you can't get into the rule making to flesh it out. She asked if it would be acceptable if the Council played an integral role in setting the stage for rule making. Tom Bingham said parameters for defining needed to be developed, and suggested it be defined for those the disaster significantly impacts, but felt it was too broad right now. Bill Starks said the intent was to define it in rule; however, he could draft a proposed rule that would make it more specific. Tom Bingham said the language could easily be instituted to guide creation of the rule so it isn't interpreted differently each time a disaster is declared. Jim Olsen said it needs to be tightened up with more specific circumstances and not just a declaration, such as for a drought. Bill Starks said the intent was for disasters such as earthquakes that were extensive and impacted a broad base of claimants and employers. Art Hunsaker said he also works on the Rules Committee and an emergency rule can be very specific for a certain length of time, and goes into effect when it is filed. That might address the Council's concern that it could only be instituted if there was an immediate situation to address for a finite period. Greg Diven said this idea has merit if there is a

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way to address it in emergency legislative alteration to the rule. He would rather have something like that rather than the statute being too vague. Jim Olsen said he would like to see the draft rules with the statute changes in order to see the direction. Tom Bingham said the impact, not the disaster, should be described, and asked Art Hunsaker if that could be drafted in statute. Art Hunsaker said it might not suit the need, but could. Bill Starks said he needs the proposal before the September 19 interim meeting. He will draft additional language for statute rather than rule, addressing the magnitude of the disaster and the impact on claimants' ability to file claims and employers' ability to employ workers. He will email it to the Council for their feedback prior to the interim meeting.

Greg Diven said the other proposed statute changes make sense, such as not going into the employment offices to file claims. Bill Starks said the remainder of the changes remove archaic language and clarifies that the claimant must remain able and available for work as a condition of continued eligibility unless they are in department-approved training.

**Motion:** Tom Bingham made the motion that the statute be rewritten more tightly in time for the September 19 Interim. Jim Olsen seconded. Motion passed unanimously.

Bill will draft it by early next week and ask for feedback from the Council within a 48-hour turnaround period.

## UPDATE ON UI TRUST FUND

Bill Starks said these are preliminary estimates; the final numbers should be available November 1-15.

*UI Trust Fund Reserve Factor and Social Cost Calculation:* The fund had a balance of \$776M in FY07, which is an all-time high. This is now outside the calculated maximum adequate reserve level. The actuarial assumption was a 9% increase in total wages from 2008 to 2011; however, preliminary information from three of four quarters is that wages will be up 13.6%. This drives the maximum and minimum adequate. The new numbers may show a maximum adequate reserve of \$792 million and a minimum adequate of \$709 million. The reserve factor may go down to .90 and the social cost at .003, but very close to .002. The social cost is the minimum rate charged to employers without any benefit costs in the last four fiscal years. Tom Bingham asked if the increase in wage is being driven by low unemployment. Bill Starks said it is attributable to both high job growth and low unemployment. Chris Love said it is wage growth and not necessarily a percentage increase in wages, which is an important distinction. Bill Starks said we look at the 5 highest benefit costs ratios of the last 25 years, this is a ratio of total benefits paid to total wages and right now we're using all the years in 1980s for the 2008 rate year, they will be dropping off in the coming years.

Bill Starks said at the last Council meeting, it was brought up whether to further discussion on the issue of raising taxes during a recession to fund the Trust Fund. He referenced an Unemployment Insurance Significant Measures handout, which ranks several aspects of the states' unemployment insurance finances. For Benefits Paid as a

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Percent of Total Wages, Utah is tied for the third lowest in the nation. States that don't have tax rates set in statute have problems remaining solvent. Utah's Average Tax Rate, as a percent of total wages, is equal to the national average and ranks #31. Utah's Reserve Ratio is almost triple the national average and ranks #14. Utah has a healthy Trust Fund relative to the national average. Some states have larger funds, but to change Utah's is a decision the Council would have to recommend. In 2002 and 2003, when our benefit costs were about \$250 million per year, legislation was enacted in the 2004 legislature to repeal 2000 legislation to re-establish social cost at .003 instead of .001 and have them calculated on their own merit. The minimum adequate was changed from 18 to 17 months and the maximum adequate was changed from 24 to 18 months in 2000, as a way to lower taxes for employers with benefit costs. Ed Mayne noted that this was worked out in the Council, and we're still solvent, but there is some weakening around the country in housing and retail sales. Kristen Cox said the Department's economists don't predict a significant downturn next year. Ed Mayne said the Council works well together with a level of trust it has developed to address issues, and labor understands that. We've been flexible in those crises. Our benefit level is not the best or worst and we're right at average. Jim Olsen said when we changed the legislation, the Trust Fund was up to 28-29 weeks for benefits. Tom Bingham suggested looking at the numbers to see if we want to get back to the 18-24 month range. Bill Starks will run a projection on those numbers. He noted that the reserve factor has no impact on two thirds of the employers with no social costs. This would bring the current trust fund level back into the adequate range rather than above the adequate range. This will be reviewed at the next meeting. Greg Diven said, knowing how quickly things can change, he would be on the conservative side. Jim Olsen preferred to build a reserve when the economy was good and not when we're in a recession. That's when it shouldn't be increased in order to keep people employed. He recommended going from 19 months to 24 months, but no higher, so that the fund would have more money before increased costs are triggered.

*Social Security Offset:* Rep. Newbold asked Bill Starks to discuss an issue a constituent had with the Social Security offset. Due to the offset, the claimant received only \$17 per week for his unemployment benefit. If there were no Social Security offset, he would have received \$160. Rep. Newbold knew it was going to sunset in 2011 and asked Bill Starks to bring it up at the Council. Ed Mayne asked if she didn't want any offset. Bill Starks noted that we are one of nine states with a 50 percent offset and there are 41 states with no offset, Puerto Rico and the Virgin Islands have a 100 percent offset. Bill Starks had mentioned to Rep. Newbold that the Council would probably want to see what the costs were until the sunset. Ed Mayne would like to eliminate it totally, but wants to give it a couple more years. The members agreed with waiting.

## **DISCUSSION ON MISCLASSIFIED WORKERS**

Bill Starks said the Workforce Interim Committee is discussing the issue of misclassified workers on September 19, and he wanted to give the Council a preview as to what the Department is doing to address misclassified workers. Ed Mayne said it's called shadow employment. There was an article in the *SL Tribune* about funding more staff for the Attorney General's office in order to investigate this problem. States are losing a significant amount of tax base. He said there could be legislation, but there definitely

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will be an appropriations request to provide more funding to DWS or the Attorney General's office to look into this. Bill Starks said DWS has been proactive in determining whether an unemployed worker is considered an independent contractor or an employee. Most investigations are because the employer treated the claimant as an independent contractor. The employer often appeals our determinations that the workers are employees, as it is a significant liability in other areas such as Workers Compensation. Over 500,000 IRS form 1099s were issued to Utah workers last year, however a lot are legitimate. We filter the form 1099 database to take out real estate and agriculture workers, who are usually exempt from UI coverage. We filter further to see how many people were issued only one 1099, which can be a good indication if the claimant is just working for one employer, and is more dependently than independently established. We have 23 auditors charged with auditing a certain number of 1099s to target potential employers for audit. The primary industries using independent workers in Utah include the construction industry, film/entertainment industry, mortgage lending industry, and trucking industry. Ed Mayne asked if there are a lot of undocumented workers filing for unemployment benefits. Bill Starks said no, as it is difficult for them to get those benefits without valid documents since we verify the documents. Ed Mayne said this problem spreads the cost of doing business to other taxpayers. Bill Starks noted that unless the person is filing for unemployment benefits, DWS typically does not pursue questionable wage data identities. We suspect that many undocumented workers are also being misclassified as independent contractors; that's why the employment verification and misclassification were brought up together in Interim. DWS' approach is to leverage its resources and share information. The Department is working with several agencies, including the Labor Commission, Department of Commerce, and Workers Compensation to share information and to get leads. Additionally, DWS works with Professional Licensing to require contractors to register with DWS before a contractor can be issued a license. Utah is the only state in its 11-state region that is using 1099s to target fraud. The Department is the biggest compliance arm for looking at misclassified workers in the state. Legislation and multi-department workgroups will likely result from this in the 2008 legislature.

## ADJOURN

The meeting adjourned at 3:20 p.m.